

AMS - 333-78674

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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GARY D. GOTLIN, as Public Administrator of The State of  
New York, in and for the County of Richmond, in his  
capacity as Administrator of the Estates of the following  
decendents:

GIUSEPPA CARAMANNA BONO, deceased, and her  
surviving spouse, GIUSEPPE BONO,

DINO BROVELLI, deceased, and his surviving spouse,  
PATRIZIA SIRAGUSA BROVELLI;

DINO CATTAI, deceased, and his surviving spouse,  
VIRGINIA GRANDIN CATTAI;

FRANCESCO CENTORE, deceased, and his surviving  
spouse, MARIA MENSITIERI CENTORE;

GIUSEPPE DiGANCI, deceased, and his surviving  
spouse, MARIA RITA PULEO DiGANCI;

ROBERTO ETTORE, deceased, and his surviving spouse,  
CARMELA FRAMMARTINO ETTORE; and

MASSIMO FACCHINI, deceased, and his surviving  
spouse, FEDERICA LOSACCO FACCHINI;

and

GIANCARLA PESCI; and ANTONIO RODA,

Plaintiffs,

-against-

GILBERT S. LEDERMAN, M.D.; GILBERT  
LEDERMAN, M.D., P.C.; PHILIP JAY SILVERMAN,  
M.D.; IRINA GROSMAN, M.D.; JOSEPH CONTE;  
SALVATORE CONTE; MARIA GELMI-NOURBAHA;  
ANNAMARIA PERSICO; STATEN ISLAND UNIVERSITY  
HOSPITAL; NORTH SHORE-LONG ISLAND

**NOTICE OF PRE-  
ANSWER MOTION  
TO DISMISS**

**CV 04 3736**

GLASSER, J.

MANN, M.J.

JEWISH HEALTHCARE, INC.; NORTH SHORE-  
LONG ISLAND JEWISH HEALTH SYSTEM,  
INC.; ANDREW J. PASSERI; ALFRED L. GLOVER;  
RALPH J. LAMBERTI; GERALD FERLISI;  
ANTHONY C. FERRERI; BETSEY MERCEREAU;  
RICK J. VARONE; JOSEPH R. PISANI; DALE TAIT;  
JOHN L. COSTELLO; JOHN A. D'ANNA; AND JOHN  
M. SHALL,

Defendants.

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C O U N S E L O R S :

NOTICE IS HEREBY GIVEN that, upon the annexed Declaration of Anthony M. Sola, Esq., executed on October 19, 2004, with attached exhibits including the affidavits of defendants Joseph Conte, Andrew J. Passeri, Joseph J. Pisani, and Dale Tait, the accompanying Memorandum of Law, and on all the pleadings and papers on file in this action, Defendants Joseph Conte, Maria Gelmi-Nourbaha, Staten Island University Hospital, North Shore-Long Island Jewish Healthcare, Inc., North Shore-Long Island Jewish Health System, Inc., Andrew J. Passeri, Alfred Glover, Ralph J. Lamberti, Gerald Ferlisi, Anthony C. Ferreri, Elizabeth Mercereau, s/h/a "Betsey Mercereau", Americo Varone, s/h/a "Rick J. Varone", Joseph R. Pisani, Dale Tait, John L. Costello, John A. D'Anna and John M. Shall will move this Court before the Honorable I. Leo Glasser at the United States District Court Courthouse, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York, 11201 on the 19th day of November 2004 in the forenoon of that day (subject to a joint briefing schedule yet to be determined), or as soon thereafter as counsel may be heard, for:

(1) an Order, pursuant to the Fed. R. Civ. P. 12(b)(1), dismissing Plaintiffs' Complaint in its entirety, with prejudice, as to Defendants Joseph Conte, Maria Gelmi-Nourbaha, Staten

Island University Hospital, North Shore-Long Island Jewish Healthcare, Inc., North Shore-Long Island Jewish Health System, Inc., Andrew J. Passeri, Alfred Glover, Ralph J. Lamberti, Gerald Ferlisi, Anthony C. Ferreri, Elizabeth Mercereau, Americo Varone, Joseph R. Pisani, Dale Tait, John L. Costello, John A. D'Anna and John M. Shall, for lack of jurisdiction over the subject matter, and for

(2) an Order pursuant to Fed. R. Civ. P. 12(b)(6) dismissing, with prejudice, as to said defendants Count II (Common Law Fraud); Count III (Unjust Enrichment); Count V (Negligent Misrepresentation); Count VI (Breach of Warranty); Count XI (Lanham Act); and Count XII (RICO Act), and for

(3) an Order pursuant to Fed. R. Civ. P. 12(b)(6) dismissing with prejudice, as to said defendants, Count VIII (N.Y.S. Public Health Law §2805-d), and, in the alternative, for

(4) an Order pursuant to Fed. R. Civ. P. 12(b)(2) and (4) dismissing the Complaint against Andrew J. Passeri; Americo Varone; Joseph R. Pisani and Dale Tait for lack of jurisdiction over the person, and amending the caption of this case by deleting said defendants from the caption of the case, and for

(5) an Order pursuant to Fed. R. Civ. P. 12(f) to strike from the Complaint various statements and/or allegations as redundant, immaterial, impertinent or scandalous matter, and


(6) granting these moving defendants such other incidental relief, including the costs of this motion, as may be deemed by the Court to be appropriate.

Pursuant to Local Civil Rule 6.1(b)(2) of the Rules of the United States District Court for the Eastern District of New York, opposing Affidavits and answering Memoranda of Law must be served no later than November 9, 2004.

Dated: New York, New York  
October 19, 2004

Yours, etc.

MARTIN CLEARWATER & BELL LLP

By:   
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